Customs Bulletin

Regulations, Rulings, Decisions, and Notices concerning Customs and related matters

and Decisions

of the United States Court of Customs and Patent Appeals and the United States Customs Court

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DEPARTMENT OF THE TREASURY
U.S. Customs Service

NOTICE

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THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 5, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on September 28, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, concerning imports into the United States of certain cotton textiles and cotton textile products produced or manufactured in Haiti.

The first paragraph of the directive of September 28, 1973 is amended, effective as soon as possible, to read as follows:

"Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the Bilateral Cotton Textile Agreement of November 3, 1971 between the Governments of the United States and Haiti, and in accordance with procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1973 and for the twelve-month period extending through September 30, 1974, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 39, 51, 53, and 63 produced or manufactured in Haiti in excess of the following levels of restraint:

Category	*Twelve-Month Levels of Restraint*
39	220,500 dozen pairs
51	56,189 dozens
53	20,687 dozens
63	391,304 pounds"

The actions taken with respect to the Government of Haiti and with respect to imports of cotton textiles and cotton textile products from Haiti, have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs being necessary to the implementation of such actions, fall within

the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and
Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-3)

Supplies and equipment for aircraft—Customs Regulations amended

Section 10.59(f), Customs Regulations, relating to free withdrawal of supplies and equipment for aircraft, amended to add Egypt to the list of qualified countries

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C.

TITLE 19—CUSTOMS DUTIES

CHAPTER I—UNITED STATES CUSTOMS SERVICE

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

In accordance with section 309(d), 46 Stat. 690, as amended (19 U.S.C. 1309(d)), the Secretary of Commerce has found and under date of July 5, 1973, has advised the Secretary of the Treasury that, with respect to aircraft fuels and lubricants, Egypt allows privileges substantially reciprocal to those provided for in sections 309 and 317, 46 Stat. 690, as amended, 696, as amended (19 U.S.C. 1309, 1317), to aircraft registered in the United States and engaged in foreign trade. Corresponding privileges are accordingly extended to aircraft registered in Egypt and engaged in foreign trade effective as of the date of such notification.

Accordingly, paragraph (f) of section 10.59, Customs Regulations, is amended by the insertion of "Egypt" in appropriate alphabetical order, the number of this Treasury Decision in the opposite column headed "Treasury Decision(s)" and the wording "Applicable only as to aircraft fuels and lubricants" opposite "Egypt" in the column headed "Exceptions, if any, as noted" in the list of nations in that paragraph.

(Secs. 309, 317, 624, 46 Stat. 690, as amended, 696, as amended, 759; 19 U.S.C. 1309, 1317, 1624)

As there is a statutory basis for the exemption from Customs duties on withdrawal of supplies by aircraft when reciprocity has been established, notice and public procedure thereon are found to be unnecessary and good cause exists for dispensing with a delayed effective date under the provisions of 5 U.S.C. 553.

(ADM-9-03)

VERNON D. ACREE,
Commissioner of Customs.

Approved December 12, 1973:

EDWARD L. MORGAN,
Assistant Secretary of the Treasury.

[Published in the Federal Register December 21, 1973 (38 FR 34996)]

(T.D. 74-4)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in category 46 manufactured or produced in Portugal

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 18, 1973.

There is published below the directive of December 5, 1973, received by the Comissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textile products in category 46 manufactured or produced in Portugal. This directive amends but does not cancel that Committee's directive of December 29, 1972 (T.D. 73-33).

This directive was published in the Federal Register on December 7, 1973 (38 FR 33795), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 5, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On December 29, 1972, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during the twelve-month period beginning January 1, 1973 of cotton textiles and cotton textile products in certain specified categories produced or manufactured in Portugal in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1] Such adjustment was previously requested in Category 46 by directive of November 19, 1973.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraph 16 of the Bilateral Cotton Textile Agreement of November 17, 1970, as amended, between the Governments of the United States and Portugal, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed further to amend, effective as soon as possible, the level of restraint established in the aforesaid directive of November 19, 1973 for cotton textile products in Category 46 to 66,139 dozens.[2]

The actions taken with respect to the Government of Portugal and with respect to imports of cotton textiles and cotton textile products from Portugal have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions fall

[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of November 17, 1970, as amended, between the Governments of the United States and Portugal which provide, in part, that within the aggregate and applicable group limits, limits on certain categories may be exceeded by not more than 5 percent; for the limited carryover of shortfalls in certain categories to the next agreement year; and for administrative arrangements.

[2] This level has not been adjusted to reflect any entries made on or after January 1, 1973.

within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

ALAN POLANSKY,
Acting Chairman, Committee for the Implementation of Textile Agreements, and Acting Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74-5)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles in category 9 manufactured or produced in El Salvador

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 18, 1973.

There is published below the directive of November 28, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles in category 9 manufactured or produced in El Salvador. This directive amends but does not cancel that Committee's directive of March 29, 1973 (T.D. 73-102).

This directive was published in the Federal Register on December 13, 1973 (38 FR 34360), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

November 28, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

On March 29, 1973, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry during

the twelve-month period beginning April 1, 1973 of cotton textiles and cotton textile products in certain specified categories produced or manufactured in El Salvador, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1] The directive of March 29, 1973 was subsequently amended by directive of May 29, 1973.

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to paragraphs 4 and 8 of the Bilateral Cotton Textile Agreement of April 19, 1972, as amended, between the Governments of the United States and El Salvador, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed further to amend, effective as soon as possible, the level of restraint established in the aforesaid directive of May 29, 1973 for cotton textile products in Category 9 to 1,725,000 square yards for the twelve-month period beginning April 1, 1973.[2]

The actions taken with respect to the Government of El Salvador and with respect to imports of cotton textile products from El Salvador have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton Textile Agreement of April 19, 1972, as amended, between the Governments of the United States and El Salvador which provide, in part, that within the aggregate limit, limits on certain categories may be exceeded by not more than five (5) percent; for limited carryover of shortfalls in certain categories for the next agreement year; and for administrative arrangements.

[2] This level has not been adjusted to reflect any entries made on or after April 1, 1973.

(T.D. 74-6)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles and cotton textile products manufactured or produced in Pakistan

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 18, 1973.

There is published below the directive of December 5, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the visa requirement for cotton textiles and cotton textile products manufactured or produced in Pakistan. This directive amends but does not cancel that Committee's directive of May 16, 1973 (T.D. 73-154).

This directive was published in the Federal Register on December 13, 1973 (38 FR 34359), by the Committee.

(QUO-2-1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 5, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive further amends, but does not cancel, the directive of May 16, 1973, from the Chairman, Committee for the Implementation of Textile Agreements that directed you, effective as soon as possible and until further notice, to exempt from the levels of restraint applicable to the Bilateral Cotton Textile Agreement of May 6, 1970, as amended, between the United States and Pakistan certain traditional Pakistan Items. One of the requirements is that each certification for exempt items must include the signature of an official authorized to issue such certifications. The aforementioned directive of May 16, 1973 was previously amended by directive of August 22, 1973.

Pursuant to the aforementioned authority and in accordance with the procedures of Executive Order 11651 of March 3, 1972, the directive of May 16, 1973, is further amended to authorize Mr. M. Adil Siddiqui to issue certifications for exempt items, in addition to the nine officials previously designated. A facsimile of Mr. Siddiqui's signature is enclosed.

The actions taken with respect to the Government of Pakistan and with respect to imports of cotton textiles and cotton textile products from Pakistan have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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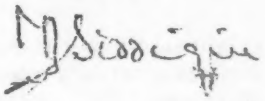
Specimen Signature of Additional Government of Pakistan Certifying Officer for Traditional Pakistan Items

Official	*Signature*
M. Adil Siddiqui Research Officer Export Promotion Bureau Lahore	

(T.D. 74-7)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textile products in categories 48 and 49 manufactured or produced in the Republic of China

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 18, 1973.

There is published below the directive of December 4, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction

on entry into the United States of cotton textile products in categories 48 and 49 manufactured or produced in the Republic of China. This directive amends but does not cancel that Committee's directive of April 2, 1973 (T.D. 73–111).

This directive was published in the Federal Register on December 13, 1973 (38 FR 34360), by the Committee.

(QUO–2–1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 4, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

This directive amends but does not cancel the directive issued to you on April 2, 1973 by the Chairman, Committee for the Implementation of Textile Agreements, regarding imports into the United States of cotton textiles and cotton textile products produced or manufactured in the Republic of China.

Paragraph two of the directive of April 2, 1973 is amended herewith to read as follows:

"Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the Bilateral Cotton Textile Agreement of December 30, 1971, as amended, between the Governments of the United States and the Republic of China, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective as soon as possible and for the twelve-month period extending through December 31, 1973, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in Categories 48 and 49, produced or manufactured in the Republic of China, in excess of the following:

Category	*Twelve-Month Levels of Restraint*[1]
48	19,950 dozen
49	30,692 dozen"

[1] These levels have not been adjusted to reflect any entries made on or after January 1, 1973.

The actions taken with respect to the Government of the Republic of China and with respect to imports of cotton textiles and cotton textile products from the Republic of China have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

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(T.D. 74–8)

Cotton textiles—Restriction on entry

Restriction on entry of cotton textiles in certain categories manufactured or produced in the Arab Republic of Egypt

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, D.C., December 18, 1973.

There is published below the directive of December 7, 1973, received by the Commissioner of Customs from the Chairman, Committee for the Implementation of Textile Agreements, concerning the restriction on entry into the United States of cotton textiles in certain categories manufactured or produced in the Arab Republic of Egypt.

This directive was published in the Federal Register on December 13, 1973 (38 FR 34359), by the Committee.

(QUO–2–1)

R. N. MARRA,
Director, Appraisement and Collections Division.

THE ASSISTANT SECRETARY OF COMMERCE
WASHINGTON, D.C. 20230

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

December 7, 1973.

COMMISSIONER OF CUSTOMS
Department of the Treasury
Washington, D.C. 20229

DEAR MR. COMMISSIONER:

Under the terms of the Long-Term Arrangement Regarding International Trade in Cotton Textiles done at Geneva on February 9, 1962, pursuant to the Bilateral Cotton Textile Agreement of October 5, 1970, as extended, between the Governments of the United States and the Arab Republic of Egypt, effected by an exchange of notes between the Government of the United States and the Government of India, representing the interests of the Arab Republic of Egypt, and in accordance with the procedures of Executive Order 11651 of March 3, 1972, you are directed to prohibit, effective October 1, 1973, and for the three-month period extending through December 31, 1973, entry into the United States for consumption of cotton textiles in Categories 1/2, 3/4, 9/26, and 16/21/22/27, produced or manufactured in the Arab Republic of Egypt, in excess of the following levels of restraint:

Category	*Three-Month Levels of Restraint*
1/2	926,100 pounds (of which not more than 868,219 pounds may be in Category 1, and not more than 115,763 pounds may be in Category 2)
3/4	173,644 pounds (of which not more than 17,365 pounds may be in Category 4)
9/26	8,682,188 square yards (of which not more than 7,235,156 square yards may be in Category 9, and not more than 2,894,063 square yards may be in Category 26)
16/21/22/27	2,604,656 square yards (of which not more than 940,570 square yards may be in Category 16; not more than 1,012,922 square yards may be in Category 21; not more than 1,012,922 square yards may be in Category 22; and not more than 564,342 square yards may be in Category 27)

In carrying out this directive, entries of cotton textiles in the above categories, produced or manufactured in the Arab Republic of Egypt, which have been exported to the United States from the Arab Republic of Egypt prior to October 1, 1973, shall, to the extent of any unfilled balances, be charged against the levels of restraint established for such goods during the period October 1, 1972 through September 30, 1973. In the event that the above levels of restraint established for such goods for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this letter.

The levels of restraint set forth above are subject to adjustment pursuant to the provisions of the bilateral agreement of October 5, 1970, as extended, between the Governments of the United States and the Arab Republic of Egypt which provide, in part, for the limited carryover of shortfalls in certain categories to the next agreement year and for administrative arrangements. Any appropriate adjustments pursuant to the provisions of the bilateral agreement referred to above will be made to you by further letter.

A detailed description of the categories in terms of T.S.U.S.A. numbers was published in the Federal Register on April 29, 1972 (37 F.R. 8802), as amended on February 14, 1973 (38 F.R. 4436).

In carrying out the above directions, entry into the United States for consumption shall be construed to include entry for consumption into the Commonwealth of Puerto Rico.

The actions taken with respect to the Government of the Arab Republic of Egypt with respect to imports of cotton textiles and cotton textile products from the Arab Republic of Egypt have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rule-making provisions of 5 U.S.C. 553. This letter will be published in the Federal Register.

Sincerely,

SETH M. BODNER,
Chairman, Committee for the Implementation of Textile Agreements, and Deputy Assistant Secretary for Resources and Trade Assistance

Decisions of the United States Customs Court

Protest Decisions

(C.D. 4488)

C. B. SMITH CO., INC. *v.* UNITED STATES

Lumber

Court No. 67/46841

Port of Los Angeles

[Judgment for plaintiff.]

(Decided December 6, 1973)

Stein & Shostak (*Leonard M. Fertman* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*David B. Greenfield*, trial attorney), for the defendant.

RICHARDSON, Judge: The merchandise at bar, described as "Birch Edge Glued Squares" or "Birch Edge Glued Lumber" was classified

528-681—74——3

in liquidation under item 207.00, TSUS, as articles of wood, not specially provided for, at the duty rate of 16⅔ *per centum advalorem*. It is claimed by the plaintiff-importer that the merchandise should be classified under item 202.53, TSUS, as hardwood, edge-glued or end-glued, not over 6 feet in length or over 15 inches in width, and not drilled or treated, at the duty rate of 5 *per centum ad valorem*.

In its complaint plaintiff alleges, among other things, that the subject merchandise is similar in all material respects to the merchandise the subject of *C. B. Smith & Co.* v. *United States*, 64 Cust. Ct. 278, C.D. 3991 (1970), and further, requests that judgment issue directing the district director to reliquidate the involved entries under item 202.53, TSUS, in accordance with its claim. In its answer the defendant admits all of the allegations of the complaint, and consents to the entry of judgment sustaining plaintiff's claim as to "Birch Edge Glued Squares" or "Birch Edge Glued Lumber." Plaintiff has made a motion for judgment on the pleadings pursuant to court rule 4.9.

In the case cited in the complaint the merchandise consisted of hardwood (birch) which was glued, not drilled or treated, and not over 6 feet in length or 15 inches in width, and not dedicated to any particular use. The court, after extensively reviewing the legislative history of item 202.53, TSUS, and the evidence as to practices in the lumber industry, held that the imported merchandise was dutiable under item 202.53, TSUS, as claimed, and not under item 207.00, TSUS, as classified. In the instant case defendant admits that the merchandise at bar is similar in all material respects to the merchandise the subject of the cited case. Consequently, since the pleadings fail to raise any triable issue in the case the necessity for further proceedings in this action is obviated.

Plaintiff's claim for classification of "Birch Edge Glued Squares" or "Birch Edge Glued Lumber" under item 202.53, TSUS, is sustained. The motion for judgment on the pleadings is granted.

(C.D. 4489)

DUSHOFF DISTRIBUTING CORP. *v.* UNITED STATES

Stone products

Marble saddles, 4 inches wide, ¾-inch high, in lengths of 24, 26, 28, 32 and 36 inches, single or double beveled, used in thresholds between rooms with tiled floors or between one room with a tiled floor and one not, held properly dutiable at 21 per centum ad valorem under item 514.81, Tariff Schedules of the United States, as marble

articles, not specially provided for, and not under item 514.65, as marble slabs, rubbed or polished in whole or in part.

MARBLE SADDLES—SLABS—CONSTRUCTION

Under the definition in headnote 2, schedule 5, part 1C, Tariff Schedules of the United States, the term "slabs" is limited to flat stone pieces, not over 2 inches thick, having a facial area of 4 square inches or more, whether or not cut to size and whether or not rubbed or polished, the edges of which have not been beveled, rounded or otherwise processed. An exception to the requirement that the edges not be beveled, rounded or otherwise processed, made as to "such processing as may be needed to facilitate installation as tiling or veneering in building construction," must be strictly construed. The definition limits the processing permitted to such as facilitates the placing or setting the stone pieces in question in their final location in the wall, floor or ceiling of a building. Saddles which have been beveled for safety purposes and not to ease handling or facilitate their installation in a threshold do not fall within the definition.

Court No. 68/44403

Port of Philadelphia

[Judgment for defendant.]

(Decided December 6, 1973)

Allerton deC. Tompkins for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*Joseph I. Liebman* and *David A. Ast*, trial attorneys), for the defendant.

RAO, Judge: The merchandise involved in this case is described on the invoice as honed Carrara marble saddles, 4 inches wide, ¾-inch high, in lengths of 24, 26, 28, 32, and 36 inches. They were assessed with duty at 21 per centum ad valorem under item 514.81, Tariff Schedules of the United States, as marble articles, not specially provided for. It is claimed that they are properly dutiable at 7 per centum ad valorem under item 514.65, as marble slabs, rubbed or polished in whole or in part. An alternate claim in the complaint for classification under item 514.61, as marble slabs, not rubbed or polished in whole or in part, has apparently been abandoned.

The pertinent provisions of the tariff schedules are as follows:

Schedule 5, part 1

Subpart C. – Stone and Stone Products

Subpart C headnotes:

* * * * * * *

2. The term "slabs" (items 514.61 and 514.65) embraces flat stone pieces, not over 2 inches in thickness, having a facial area of 4 square inches or more, whether or not cut to size and whether or not one or both surfaces have been rubbed or polished, the edges of which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tiling or veneering in building construction.

* * * * * * *

	Marble, breccia, and onyx, and articles of one or more of these substances:	
	Marble, breccia, in block, rough or squared only	* * *
* * * * * * *		
	Slabs:	
514.61	Not rubbed and not polished in whole or in part	5.5% ad val.
514.65	Rubbed or polished in whole or in part	7% ad val.
514.81	Other, not specially provided for	21% ad val.

In the pleadings defendant has conceded that the merchandise is of marble, is not in block, rough or squared only, is not over 2 inches thick, is rubbed or polished in whole or in part, and has a facial area of 4 square inches or more. It denies that the merchandise is flat and denies that it has edges which have not been beveled, rounded or otherwise processed except such processing as may be needed to facilitate installation as tilting or veneering in building construction.

Plaintiff called two witnesses at the trial: Henry J. Maier, general manager of Dushoff Distributing Corp., which firm handles ceramic and mosaic tiles, and items used in conjunction with tiling, such as marble thresholds and saddles, and other sundry items, such as tools, insets, and mortars; and Francis Trevisan, who has been in the tiling installation business almost all his life and is president of Atlas Terrazzo and Tile Company. Defendant called Malcolm S. Cohen, an officer of Domestic Marble and Stone, Inc., Domestic Stone Erectors, Inc., and Miller Druck Corp., which firms are engaged respectively in the wholesaling of finished and rough stone and marble, the installation of exterior stone and marble, and the fabrication and installation of interior marble.

Mr. Maier testified that he had purchased the merchandise involved herein and stated that two types of saddles were imported, one with a double bevel and the other with a single bevel. Two samples of merchandise with a double bevel were received in evidence as exhibits 1 and 2.

It appears from the record that ceramic tiles are used in buildings, on floors, walls and ceilings, for sanitary and decorative purposes. A marble saddle is used in a doorway as a threshold between two rooms with tiled floors or between one room with a tiled floor and one not. It may have one, two or no bevels, depending upon the elevation of the adjoining rooms. A bevel is a 45 degree angulation cut along the face and side of the saddle. In other words, the arris is removed to a sufficient degree to form a flat surface which is at an angle to the adjacent two surfaces. Single-beveled saddles have one square edge and one beveled edge. A saddle with no bevel is seldom used and must be placed so as to be flush with the floor on both sides. A single bevel saddle is used where the tile floor is of a higher elevation than the floor outside. It provides a ramp from one elevation to another. Saddles are beveled basically as a safety measure, to prevent people from tripping because the face of the saddle is higher than the floor. Bevels make it easier to walk from one room to another without stubbing the toes. A saddle also serves as a waterstop in case there is flooding, in a bathroom for instance. The presence of a saddle requires that the door be higher, so that it may clear a rug or mat on the floor.

Marble saddles are installed in the following manner: First, the floor must be checked to see that it is level. Then either a layer of adhesive, or a thin bed of mortar, or a full mortar installation, consisting of a mixture of sand and cement, is spread on the floor. The saddle is set into it and tapped down to make sure it is securely bonded.

Plaintiff's witnesses regarded exhibits 1 and 2 as flat stone pieces since the bottom and top surfaces were flat and did not have dips, doodles, curves, or ripples. In their view the beveling did not destroy the flat effect. Defendant's witness, on the other hand, said the pieces were flat only insofar as the space between the bevels was concerned. In his opinion, a flat piece must be even between the extreme vertical edges.

Mr. Maier considered tiling to be the installation of products, such as wall tile, mosaic floor tile, and items which support the installation of such coverings. He said a saddle is tiling, in the sense that it covers a facial area. Without it, the installation of tiling in a room is not complete. A bevel on the saddle is necessary to facilitate the tiling installation.

Mr. Trevisan also regarded the saddle as a part of the tiling. Without it, he said, the tiling would be incomplete; there would be a raw edge. The bevel on the saddle completes and facilitates tile installation. It facilitates the appearance and function of the final floor arrangement, but it does not make it easier to place the article in the threshold with the mortar or adhesive.

Mr. Cohen called the imported merchandise saddle blanks because they had not been notched to fit into the contour of a door frame. He testified that saddles are not marble tiling or veneering. He defined marble tiling, as marble rectangles of various sizes, used for flooring or wall covering, and marble veneering as the use of marble as exterior or interior wall cladding.

In his opinion, the beveling on exhibits 1 and 2 does not facilitate their installation, as far as labor is concerned. They could be installed whether or not they had a bevel and the workmen putting them in would not have any more or less ease in installing them. In the industry, he said, the term "installation" means the placing or setting of the material in its final location.

The witnesses also mentioned another process applied to marble articles, called mitering. There are two types of mitering, one is a miter in which the back edge of the marble is cut at an angle so that it will meet another piece that has a similar angle cut on the back of it, to go around a corner. A quirk miter is much the same thing except that it has a slightly square edge to it. Mr. Cohen said that this process does not aid or facilitate installation. It is an architectural feature.

The question before the court is whether the imported saddles are slabs within the definition in schedule 5, part 1C, headnote 2, *supra*.

The merchandise here is not completely flat since it has been beveled. To be considered a slab under the definition, the beveling must constitute "such processing as may be needed to facilitate installation as tiling * * * in building construction."

Plaintiff claims that these words refer to the complete installation of tiling in a room; that the saddles herein are a part of tiling, and that the beveling process is necessary to facilitate or complete that installation. It says that the tiling job would be inherently defective if an unbeveled saddle were employed; that beveling done prior to delivery at the site avoids a delay that would result from having to process the merchandise on location, and that therefore it facilities the installation of the tiling.

Defendant contends, on the contrary, that by the definition Congress intended to exclude from the provision for slabs articles whose edges have been beveled, rounded or otherwise processed for a purpose other than to ease handling during their installation.

The Tariff Classification Study of November 15, 1960, which was before Congress when the tariff schedules were adopted, states (schedule 5, pp. 24):

> A very difficult problem arises under the current provisions in determining whether the slabs or tiles have been processed for use as lamp bases, table tops, desk sets, etc. In order to make certain

> the intended scope of this provision, the definition specifies that a slab may or may not be cut to size and that it may or may not have one or both of its surfaces rubbed or polished, but the definition does not permit stone pieces to be included if the edges have been beveled, rounded, or otherwise processed except for such processing as may be needed to facilitate installation as tiling or veneering in building construction. The headnote is not intended to preclude from classification as slabs stone pieces the edges of which have merely been "eased" for handling purposes. The definition will result in the classification of some articles at the higher rate of 21 percent ad valorem in item 514.81. This change, however, is incidental to necessary clarification.

Under the definition, the term "slabs" is limited to flat stone pieces, not over 2 inches thick, having a facial area of 4 square inches or more, whether or not cut to size and whether or not rubbed or polished, the edges of which have not been beveled, rounded or otherwise processed. An exception to the requirement that the edges not be leveled, rounded or otherwise processed is made as to "such processing as may be needed to facilitate installation as tiling or veneering in building construction." The exception must be strictly construed and not extended to merchandise not clearly within its terms. *Goat and Sheepskin Import Co. et al.* v. *United States*, 5 Ct. Cust. Appls. 178, T.D. 3425 (1914); *Joleo Impex Co.* v. *United States*, 45 Cust. Ct. 6, C.D. 2189 (1960); *A. Zerkowitz & Co., Inc.* v. *United States*, 54 Cust. Ct. 151, C.D. 2525 (1965), *appeal dismissed*, 52 CCPA 125 (1965); *The De Haan Company* v. *United States*, 57 Cust. Ct. 39, C.D. 2722 (1966), *aff'd*, 55 CCPA 76, C.A.D. 936 (1968).

Under the provisions of paragraph 232 of the Tariff Act of 1930 for marble slabs and marble wholly or partly manufactured into articles, much litigation ensued as to whether particular marble pieces were material adaptable for various uses in the marble installation business, classifiable as slabs, or were wholly or partly manufactured articles. *Atlas Export Co. et al.* v. *United States*, 43 CCPA 122, C.A.D. 618 (1956); *United States* v. *General Shipping & Trading Co. et al.*, 44 CCPA 168, C.A.D. 656 (1957); *United States* v. *Quality Marble & Granite Co. et al.*, 48 CCPA 50, C.A.D. 763 (1960); *United States* v. *Selectile Co., Inc., et al.*, 49 CCPA 116, C.A.D. 805 (1962); *A. P. Baldechi & Son* v. *United States*, 56 CCPA 112, C.A.D. 963 (1969).

The definition in the tariff schedules was no doubt intended to provide a more objective test, that is, stone pieces which meet the specifications in the definition are slabs for tariff purposes, but those which are otherwise processed are not.

As I read the definition, it limits the processing beyond cutting to size and polishing to such as facilitates the placing or setting the stone pieces in question in their final location in the wall, floor or ceiling of a

building. The Tariff Classification Study points out that the exception was intended to allow stone pieces whose edges had been "eased" for handling purposes to be classified as slabs. There is nothing in the definition or in the legislative history to indicate that Congress intended the exception to be read as broadly as claimed by plaintiff, to cover processed stone pieces used in building construction so long as the processing is necessary to complete a floor arrangement or tiling job or avoid delays caused by having the work done at the site. To so construe it would thwart the purpose of the definition and open the door to more litigation.

While a beveled saddle may be necessary to complete a flooring project, it cannot be a slab within the meaning of the definition unless beveling facilitates the installation of the saddle in the floor. The evidence establishes that the imported saddles were beveled for safety purposes and not to ease handling or aid in their installation in thresholds. Therefore, they do not fall within the definition.

For the reasons stated, I hold that the imported marble saddles are not classifiable as slabs under the tariff schedules.

The action is dismissed. Judgment will be rendered accordingly.

(C.D. 4490)

WORLD MART, INC. *v.* UNITED STATES

Opinion and Order on Defendant's Motion for More Definite Statement

Court Nos. R65/4341, etc.

Port of Miami

[Motion denied without prejudice; Court No. R67/2801 dismissed.]

(Dated December 7, 1973)

Cassel and Benjamin (*Julian R. Benjamin of counsel*) for the plaintiff (except in Court No. R67/2801).

Irving Jaffe, Acting Assistant Attorney General (*Glenn E. Harris*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant's motion for a more definite statement covering these 26 appeals for reappraisement will be denied without prejudice to a reconsideration thereof.[1] In summary, plaintiff's

[1] One of the 26 appeals, Court No. R67/2801, however, will be dismissed *sua sponte* for the reasons stated hereinafter.

attorney of record has not been served with a copy of defendant's motion, and thus has had no opportunity to respond to the motion.

The complaints were signed in the following manner:

> CASSEL AND BENJAMIN AND BRIAN R. HERSH
> By _____ (Signature)
> BRIAN R. HERSH, Attorneys for Plaintiff
> 602 Biscayne Building, 19 W. Flagler St.
> Miami, Florida 33130, Tel: 379–1641

The certificate of service attached to defendant's motion recites that service by mail was made upon:

> CASSEL AND BENJAMIN AND BRIAN R. HERSH
> 602 Biscayne Building, 19 W. Flagler St.
> Miami, Florida 33130

From the foregoing documents, it would appear that service of defendant's motion was proper. However, this is not the situation as will appear from the following circumstances.

I shall first discuss the status of Brian R. Hersh, Esq. While it is true that Mr. Hersh signed and filed the complaints, he has not filed a notice of appearance in any of these 26 cases in accordance with rule 16.3(a).[2] Thus, Mr. Hersh is not regarded as plaintiff's attorney of record within the purview of rule 4.1(a)(2).[3]

Respecting Cassel and Benjamin, Esqs., I have noted that, except in Court No. R67/2801, said firm has either filed the appeals for reappraisement as plaintiff's attorney [4] or has filed notices of appearance on behalf of plaintiff, as required by rule 16.3(a), thus constituting that firm as plaintiff's attorney of record. I have further observed from the notices of appearance that the office address of Cassel and Benjamin is Suite 501 Flagler Federal Building, 111 Northeast 1st Street, Miami, Florida 33132. This address is different from the address shown on the complaints filed by Mr. Hersh and on defendant's certificate of service.

In light of the foregoing facts, it is clear that defendant's motion was not served upon plaintiff's attorney of record (Cassel and Benja-

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[2] Rule 16.3(a) provides: "(a) **Notice of Appearance:** Attorneys authorized to appear in actions pending before this court shall file notice thereof in writing with the clerk. Such notice shall state the title and court number of the action, and the name, address and telephone number of the attorney or attorneys so appearing. The notice shall be substantially in the form as set forth in Appendix F".

[3] Rule 4.1(a)(2) provides, so far as pertinent: "Every * * * written motion * * * shall be served upon each of the parties affected thereby and filed with the court in the following manner: * * * (2) upon a party other than the United States, by delivery or by mailing a copy to the *attorney of record for such party at his office address*". (Emphasis added.)

[4] As an appeal for reappraisement is a "paper commencing an action" within the purview of rule 16.3(b), separate notices of appearance are not required in those cases wherein Cassel and Benjamin filed appeals for reappraisements as plaintiff's attorney.

min) at its office address, as required by rule 4.1(a)(2). Moreover, there is nothing in the court's file to indicate that Mr. Hersh, who it is emphasized is not plaintiff's attorney of record, is *authorized* to accept service of motion papers at his office located at 602 Biscayne Building, 19 W. Flagler St., Miami, Florida 33130 on behalf of Cassel and Benjamin.

Under all of the circumstances herein, and to avoid any possible prejudice to plaintiff or its counsel, except in Court No. R67/2801, defendant's motion is hereby denied, but without prejudice to a reconsideration thereof at such time that appropriate proof is filed with the court showing service of a copy of defendant's motion upon Cassel and Benjamin at their office address, as prescribed by rule 4.1. See *World Mart, Inc.* v. *United States*, 71 Cust. Ct.—, C.R.D. 73–32 (1973).

Turning now to Court No. R67/2801, which I previously indicated would be dismissed *sua sponte*, the court's records disclose that such appeal was received by the court on February 9, 1967 and no attorney has yet filed a notice of appearance on behalf of the plaintiff. While I have noted that Mr. Hersh's name and address appear on the complaints filed by him, such complaints in this court do not constitute the requisite notice of appearance pursuant to rule 16.3(a). Unlike a complaint in the district courts which commences a civil action, pursuant to rule 3 of the Fed. Rules Civ. Proc., 28 U.S.C., a complaint in this court filed pursuant to rule 4.4 does not initiate an action. Thus, the complaints filed by Mr. Hersh are not "paper[s] commencing an action" within the purview of rule 16.3(b), which relieves attorneys from filing a separate notice of appearance if their name and address appear in a summons, or other paper commencing an action (i.e., protest or appeal for reappraisement). *World Mart, Inc.* v. *United States*, *supra*. In view of the foregoing circumstances, the plaintiff corporation is not represented by an attorney of record. Inasmuch as a corporate plaintiff in this court must be represented by counsel,[5] and plaintiff has no attorney of record in Court No. R67/2801, that case is hereby dismissed *sua sponte*.

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[5] In *S. Stern, Henry & Co.* v. *United States*, 48 Cust. Ct. 430, 431–33, Abstract 66718 (1962), *aff'd sub nom., S. Stern & Company* v. *United States*, 51 CCPA 15, C.A.D. 830, 331 F.2d 310 (1963), *cert. denied*, 377 U.S. 909 (1964), the court stated:

> A party-plaintiff may be an individual, a corporation, or an association. The individual is the only party-plaintiff who can appear and manage his case personally. Neither a corporation nor a partnership can physically appear *personally*. [Italics in original.]
>
> * * * * * * *
>
> It is generally accepted that when a corporation is a "party" it may not appear and manage its case even where it is a "consignee".

See also: *R. C. Hobelmann & Co., Inc.* v. *United States*, 63 Cust. Ct. 80, C.D. 3878 (1969).

(C.D. 4491)

PISTORINO & CO., INC. *v.* UNITED STATES

Opinion and Order on Defendant's Motion to Dismiss

Court No. 70/44322

Port of Boston

[Motion granted.]

(Dated December 7, 1973)

Walter E. Doherty, Jr., for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*James Caffentzis*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant's motion to dismiss this action for lack of jurisdiction is granted.

The pertinent facts are: Plaintiff made an entry at the port of Boston on December 2, 1968 covering two types of articles: "28 Cartons wool grease" (hereinafter wool grease), and "6 Drums other wool grease" (hereinafter other wool grease). On March 14, 1969 the entry was liquidated, and no protest was filed against such liquidation.

Subsequently, on March 6, 1970 the entry was reliquidated by the appropriate customs official, but only as to the *other* wool grease, resulting in a refund of duty to plaintiff. On May 4, 1970, plaintiff lodged a protest against the reliquidation, challenging the classification of the wool grease which was not involved in the reliquidation.

In its motion to dismiss, defendant contends that since the wool grease was not involved in the reliquidation, the protest is untimely under the provisions of 19 U.S.C. § 1514 (1964).*

It is fundamental that a protest against a reliquidation must be limited to questions involved in the reliquidation. *Moses Harvey Brot-*

19 U.S.C. § 1514 (1964), so far as pertinent provides: " * * all decisions of the collector, including * * * his liquidation or reliquidation of any entry, * * * shall upon the expiration of sixty days after the date of such liquidation, reliquidation, * * * be final and conclusive upon all persons * * * unless the importer, consignee, or agent of the person paying such charge or exaction, * * * shall, within sixty days after, but not before such liquidation, reliquidation, decision, or refusal, as the case may be, * * * file a protest in writing with the collector setting forth distinctly and specifically, and in respect to each entry, payment, claim, decision, or refusal, the reasons for the objection thereto. *The reliquidation of an entry shall not open such entry so that a protest may be filed against the decision of the collector upon any question not involved in such reliquidation".* (Emphasis added.)

man v. *United States*, 27 Cust. Ct. 251, C.D. 1380 (1951); *Joseph E. Seagram & Sons, Inc.* v. *United States*, 15 Cust. Ct. 95, C.D. 951 (1945). And issues which could have been raised at the time an entry was originally liquidated are not opened up for protest by reason of a reliquidation which fails to disturb the collector's previous determination in respect thereto. *F. W. Woolworth Co.* v. *United States*, 26 CCPA 157, C.A.D. 10 (1938); *C. M. Whitney Co., Inc.* v. *United States*, 62 Cust. Ct. 621, C.D. 3835 (1969); *Dover Shipping Co., Ltd.* v. *United States*, 4 Cust. Ct. 135, C.D. 306 (1940).

Inasmuch as the reliquidation of March 6, 1970 did not involve the wool grease, plaintiff was barred after sixty days from the original liquidation of March 14, 1969 from filing a protest concerning the classification of that merchandise. Hence, plaintiff's protest, filed on May 4, 1970 respecting the classification of the wool grease is untimely under § 1514, and the court lacks jurisdiction of this action. Accordingly, defendant's motion to dismiss is granted.

Decisions of the United States Customs Court

Custom Rules Decisions

(C.R.D. 73–33)

BARUCH PETRANKER IMPORT CO., INC., et al. *v.* UNITED STATES

Opinion and Order on Defendant's Motion to Strike Complaints

Court Nos. 68/59496, etc.

[Motion denied.]

(Dated December 7, 1973)

Glad, Tuttle & White (*John McDougall of counsel*) for the plaintiffs.

Irving Jaffe, Acting Assistant Attorney General (*David A. Ast*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaints filed in these eleven actions. The basis of the motion is that the complaints were filed by Glad, Tuttle & White, whereas the protests identify plaintiffs' attorneys as Glad & Tuttle. Defendant contends that "there was no record of substitution filed with this Court replacing the firm of Glad & Tuttle with Glad, Tuttle & White as the new attorneys of record". Admittedly, no notices of substitution, as provided for in rule 16.3(f), have been filed.

The Government's position is that Glad, Tuttle & White is a law firm distinct and separate from Glad & Tuttle. In support of such position defendant states: "It is a general rule of partnership law that even if there are some partners in common, if there is a partner not common to both partnerships, the result is separate and distinct partnerships. Cf. *Maryland Casualty Co.* v. *Glassell-Taylor Co.*, 63 F. Supp. 718 (D.C. La. 1945)".

Thus, defendant argues, that "when Mr. White entered into a partnership with Mr. Glad and Mr. Tuttle, the partnership of Glad,

Tuttle & White was formed. This partnership is separate and distinct from that of Glad & Tuttle". Further, defendant insists that it "is placed in a position wherein it does not know which firm to serve papers on, or if it should be forced to effect a duplicate service whenever this situation arises."

In opposition to defendant's motion, Messrs. Glad & Tuttle represent: "The firm of Glad, Tuttle & White is identical to Glad & Tuttle insofar as a business entity remains so through time [sic], with the exception that Mr. White achieved partnership status during the year 1971. Before that Mr. Glad, Mr. Tuttle and Mr. White were members of the bar of this Honorable Court and they remain so today". Moreover, it may be observed that Glad, Tuttle & White is located at the same office address as Glad & Tuttle.

The pertinent paragraphs of rule 16.3 are as follows:

> **(b) Initial Document:** If the summons or other paper commencing an action bears the name and address of any member or members of the bar of this court, he or they shall be recognized as the attorney or attorneys of record and no separate notice of appearance shall be required in such action.
>
> * * * * * * *
>
> **(d) Attorney of Record:** An appearance may be made in the name of an individual attorney or in a firm name. If an appearance is made in a firm name, the name of the individual attorney responsible for the litigation shall also be stated.
>
> * * * * * * *
>
> **(f) Substitution of Attorneys:** A party to any action who may desire to substitute an attorney in place of the one of record may do so by filing a notice therefor expressing his consent, signed by himself and the attorney of record. The notice shall be substantially in the form as set forth in Appendix G. If the consent of the previous attorney of record is annexed to or endorsed on the notice, substitution shall be accomplished by an appropriate entry on the docket of the court. A notice of appearance shall be filed by the substituted attorney. * * *

True, under general principles of partnership law the addition of Mr. White as a new partner to the firm of Glad & Tuttle created a new partnership (Glad, Tuttle & White), as contended by defendant. However, there is nothing in rule 16.3 even remotely suggesting that the addition of a new partner to a law firm automatically "triggers" the provisions of paragraph (f) for notices of substitution and appearance without regard to whether a new and distinctly separate law

firm has been created. Here the firm of Glad, Tuttle & White is represented to be "identical" to Glad & Tuttle except, of course, for the addition of Mr. White, a new partner, to the firm. Hence, if defendant's interpretation of rule 16.3(f) were correct, it is apparent that Glad & Tuttle would be consenting to a substitution by virtually the same firm—an unjustifiable result.

Finally, the Government is well aware that if its position were upheld on this motion, notices of substitution and appearance by Glad, Tuttle & White would not only be necessary in these eleven cases, which are the subject of defendant's motion, but similar notices would also be required in the multitude of other cases now pending in this court wherein Glad & Tuttle are named as plaintiffs' attorneys in the summons or other papers commencing the actions and in which complaints have been or will be filed by Glad, Tuttle & White. Such wholesale filing of notices of substitution and new appearances, entailing in part the obtaining of consents of the clients involved, would be an extremely oppressive requirement to impose on law firms changing their names merely because of the addition of a new partner. Such an unreasonable and harsh application of rule 16.3 was never intended, nor is it required, under the circumstances presented by this motion.

Plainly, then, the eleven complaints herein should not be stricken.

In reaching my conclusion, however, I am not oblivious to a startling inadvertence: in opposing this very motion and despite the controversy here Glad, Tuttle & White signed its opposing memorandum as Glad & Tuttle!

Orderly housekeeping—defendant must know definitely whom to serve with papers; this court's rights for obviating docket confusion, etc.—demands a meticulous and strict adherence by plaintiffs' counsel in uniform signing of all papers hereafter in these eleven cases as Glad, Tuttle & White. And further, defendant is authorized to serve all papers in these eleven cases on Glad, Tuttle & White.

Indeed, I feel constrained to observe that, perhaps, a different result might have been reached if the factual situation here had shown two law firms with different structural and different ownership rights.

The motion to strike the complaints in these eleven actions is denied.

(C.R.D. 73–34)

PHILIP J. BERNSTEIN ENTERPRISES *v.* UNITED STATES

Opinion and Order on Defendant's Motion for More Definite Statement

Court Nos. R64/24334, etc.

[Motion denied without prejudice.]

(Dated December 7, 1973)

Cassel and Benjamin (*Julian R. Benjamin* of counsel) for the plaintiff.
Irving Jaffe, Acting Assistant Attorney General (*Glenn E. Harris*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant's motion for a more definite statement covering these six appeals for reappraisement will be denied without prejudice to a reconsideration thereof. Plaintiff's attorney of record has not been served with a copy of defendant's motion, and thus has had no opportunity to respond to the motion.

The complaints were signed in the following manner:

CASSEL AND BENJAMIN AND BRIAN R. HERSH
By _____ (Signature)
BRIAN R. HERSH, Attorneys for Plaintiff
602 Biscayne Building, 19 W. Flagler St.
Miami, Florida 33130, Tel: 379–1641

The certificate of service attached to defendant's motion recites that service by mail was made upon:

CASSEL AND BENJAMIN AND BRIAN R. HERSH
602 Biscayne Building, 19 W. Flagler St.
Miami, Florida 33130

From the foregoing documents, it would appear that service of defendant's motion was proper. However, this is not the situation as will appear from the following circumstances.

I shall first discuss the status of Brian R. Hersh, Esq. While it is true that Mr. Hersh signed and filed the complaints, he has not filed a notice of appearance in any of these six cases in accordance with rule

16.3(a).[1] Thus, Mr. Hersh is not regarded as plaintiff's attorney of record within the purview of rule 4.1(a)(2).[2]

Respecting Cassel and Benjamin, Esqs., I have noted that said firm has filed notices of appearance on behalf of plaintiff, as required by rule 16.3(a), thus constituting that firm as plaintiff's attorney of record. I have further observed from the notices of appearance that the office address of Cassel and Benjamin is Suite 501 Flagler Federal Building, 111 Northeast 1st Street, Miami, Florida 33132. This address is different from the address shown on the complaints filed by Mr. Hersh and on defendant's certificate of service.

In light of the foregoing facts, it is clear that defendant's motion was not served upon plaintiff's attorney of record (Cassel and Benjamin) at its office address, as required by rule 4.1(a)(2). Moreover, there is nothing in the court's file to indicate that Mr. Hersh, who is emphasized is not plaintiff's attorney of record, is *authorized* to accept service of motion papers at his office located at 602 Biscayne Building, 19 W. Flagler St., Miami, Florida 33130 on behalf of Cassel and Benjamin.

Under all of the circumstances herein, and to avoid any possible prejudice to plaintiff or its counsel, defendant's motion is hereby denied, but without prejudice to a reconsideration thereof at such time that appropriate proof is filed with the court showing service of a copy of defendant's motion upon Cassel and Benjamin at their office address, as prescribed by rule 4.1. See *World Mart, Inc.* v. *United States*, 71 Cust. Ct. —, C.R.D. 73–32 (1973); *World Mart, Inc.* v. *United States*, 71 Cust. Ct. —, C.D. 4490 (1973).

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[1] Rule 16.3(a) provides: "(a) Notice of Appearance: Attorneys authorized to appear in actions pending before this court shall file notice thereof in writing with the clerk. Such notice shall state the title and court number of the action, and the name, address and telephone number of the attorney or attorneys so appearing. The notice shall be substantially in the form as set forth in Appendix F".

[2] Rule 4.1(a)(2) provides, so far as pertinent: "Every * * * written motion * * * shall be served upon each of the parties affected thereby and filed with the court in the following manner: * * * (2) upon a party other than the United States, by delivery or by mailing a copy to the *attorney of record for such party at his office address*". (Emphasis added.)

(C.R.D. 73–35)

DISTRIBUTORS IMPORT CO. *v.* UNITED STATES

Opinion and Order on Defendant's Motion to Strike Complaint

Court No. R67/9550

[Denied upon condition.]

(Dated December 7, 1973)

Stein & Shostak for the plaintiff.

Irving Jaffe, Acting Assistant Attorney General (*David A. Ast*, trial attorney), for the defendant.

NEWMAN, Judge: Defendant has moved to strike the complaint in this action "pursuant to the provisions of Rule 4.7(b)". The predicate of defendant's motion to strike is that "the Court lacks jurisdiction of the subject matter with respect to the merchandise identified in paragraph 4 of said complaint".

Initially, it should be pointed out that rule 4.7(b) does not provide for a motion to strike the complaint, but rather for a motion to dismiss the action.[1] However, rule 4.7(e) provides for a motion to strike, but not upon the ground urged by defendant—lack of jurisdiction of the subject matter.[2] Nevertheless, in acting upon this motion I shall grant defendant whatever relief appears appropriate under the circumstances herein, whether pursuant to rule 4.7(b) or rule 4.7(e).

Although the appeal for reappraisement filed pursuant to 19 U.S.C. § 1501 (1964) recites that "tape recorders" are the subject matter of the appeal, the complaint filed under rule 4.4 refers to "transistor radios, etc.".[3] Fundamentally, of course, this court has jurisdiction to grant relief respecting only the merchandise embraced by the appeal for reappraisement filed pursuant to § 1501, viz. tape recorders. Cf. *International Packers, Ltd.* v. *United States*, 55 Cust. Ct. 606, R.D. 11072 (1965). As indicated before, the complaint refers to "transistor radios, *etc.*" (emphasis added). It is not clear what, if any, merchandise

[1] Rule 4.7(b) provides: "**Defenses: How Presented:** The following defenses may be made by a motion to dismiss the action: (1) that plaintiff has no standing in the matter; (2) lack of jurisdiction of the subject matter; (3) failure to perform conditions precedent; and (4) failure to state a claim upon which relief may be granted. A motion making any of these defenses may be made before answer".

[2] Rule 4.7(e) provides: "**Motion To Strike:** Upon motion of defendant before answer, or upon motion of plaintiff within 30 days after the service of the answer upon him, or upon the court's own motion at any time, the court may order stricken from the complaint or answer any redundant, immaterial, impertinent, or scandalous matter".

[3] In point of fact, no transistor radios appear on the entry papers.

is encompassed by "etc.". Under these circumstances, defendant's motion to strike is denied, conditioned upon filing by plaintiff of an amended complaint within twenty days from and after the date of service of this order, deleting the reference to transistor radios and covering only the tape recorders at issue in this action.

If upon the expiration of said twenty-day period, no such amended complaint shall have been filed by plaintiff, the complaint shall be deemed stricken and this action dismissed for failure to prosecute, without any further proceeding. In such event, the clerk is directed to enter an order of dismissal without further order.

Decisions of the United States Customs Court

Abstracts

Abstracted Protest Decisions

DEPARTMENT OF THE TREASURY, *December 10, 1973.*

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

VERNON D. ACREE,
Commissioner of Customs.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1029	Boe, C. J. December 6, 1973	International Distributing Co. et al.	66/7399, etc.	Item 651.75 Various ad valorem equivalents set out in schedule A attached to decision and judgment in column headed "Assessed Rate"	Item 651.75 At appropriate specific or compound rate set forth in said schedule in columns headed "Claimed Rate"	Import Associates of America et al. v. U.S. (C.A.D. 961)	San Diego Flatware sets, barbeque sets, tool sets, etc.

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED	HELD	BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate	Par. or Item No. and Rate		
P73/1030	Boe, C. J. December 6, 1973	New York Merchandise Co., Inc.	69/16856	Item 651.75 Ad valorem equivalent rate (22.92%)	Item 651.75 Appropriate compound rate (1¢ plus 12.5%)	Import Associates of America et al. v. U.S. (C.A.D. 961)	Portland, Oreg. Flatware sets, barbeque sets, tool sets, etc.
P73/1031	Boe, C. J. December 6, 1973	United China & Glass Co.	65/4569	Item 651.75 Various ad valorem equivalent rates	Item 651.75 At appropriate compound rate (2¢ each plus 12.5%)	Import Associates of America et al. v. U.S. (C.A.D. 961)	Houston Flatware sets, barbeque sets, tool sets, etc.
P73/1032	Ford, J. December 6, 1973	Fedtro, Inc.	68/60952	Item 683.30 12%	Item 678.50 9%	J. Gerber & Co., Inc. v. U.S. (C.D. 4101)	New York Automobile vacuum cleaners
P73/1033	Richardson, J. December 6, 1973	United China & Glass Co.	68/5618, etc.	Par. 212 60% or 45% and 10¢ per doz. pcs.	Par. 212 45% Item 534.94 45%	W. Kay Company, Inc. v. U.S. (C.D. 2484) New York Merchandise Co., Inc. v. U.S. (C.D. 3463)	New Orleans Decorated porcelain cups and saucers
P73/1034	Landis, J. December 6, 1973	Strickland Enterprises, Inc. W.J. Byrnes & Co. of N.Y., Inc.	68/6043, etc.	Item 523.91 15%	Item 687.60 12.5%	Strickland Enterprises, Inc., et al. v. U.S. (C.D. 4009)	New York Quartz crystal blanks
P73/1035	Watson, J. December 6, 1973	North American Philips Co., Inc.	65/6115 etc.	Par. 397 19%	Par. 353 13 3/4%	R.J. Saunders & Co., Inc. v. U.S. (C.D. 4387)	Chicago Shaver cases

P73/1036	Maletz, J. December 6, 1973	D.H. Baldwin Co.	67/28083, etc.	Item 726.55 34%	Item 726.80 17%	Marubeni-Iida (America), Inc. v. U.S. (C.D. 4019)	Cincinnati (Cleveland) Parts of electric guitars
P73/1037	Newman, J. December 6, 1973	Durst Industries, Inc., et al.	68/15600, etc.	Item 657.35 15% plus 1.275¢ per lb.; 13.5% plus 1¢ per lb.; 12% plus 1¢ per lb.; or 10.5% plus 8/10¢ per lb.	Item 654.00 10%, 9%, 8% or 7%	The Westbrass Company v. U.S. (C.D. 4293)	New York Shower heads
P73/1038	Re, J. December 6, 1973	Arbor Import Corp.	69/48984, etc.	Item 772.06 18.9¢ per lb. and 15%; and 16.5¢ per lb. plus 13.5% (items marked "A" and "B")	Item 772.15 15% and 13.5% (items marked "A" and "B")	Davar Products, Inc. v. U.S. (C.D. 3880) (items marked "A") New York Merchandise Co., Inc. v. U.S. (C.D. 2895) (items marked "B")	Los Angeles Plastic tidbit trays, snack sets and bowls (items marked "A" and "B")
P73/1039	Re, J. December 6, 1973	Borneo Sumatra Trading Co., Inc.	62/562, etc.	Par. 405 20%	Par. 1403 12 1/2%	Borneo Sumatra Trading Co., Inc. v. U.S. (C.D. 3980)	San Francisco Crownboard, Crown Wall board, or Hardboard, two sides veneer
P73/1040	Boe, C.J. December 7, 1973	Frank P. Dow Co., Inc., a/c Ross Machine & Milling Supply Plant	70/63111	Item 666.25 9%	Item 680.60 2%	Judgment on the pleadings Ross Machine and Mill Supply, Inc., et al. v. U.S. (C.D. 4389)	Los Angeles Non-malleable cast-iron rollers for machines

Decisions of the United States Customs Court

Abstracts

Abstracted Reappraisement Decisions

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	UNIT OF VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R73/246	Boe, C. J. December 6, 1973	Consolidated Merchandising Corp. et al.	R69/5096, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan

R73/347	Boe, C.J. December 6, 1973	Consolidated Sewing Machine Corp. et al.	R68/8386, etc.	Constructed value	Set forth in schedule attached to decision and judgment	Agreed statement of facts	Los Angeles Solid-state (tubeless) radio receivers, or combination articles containing such receivers, together with batteries, and/or earphones, and/or other accessories, assembled in and exported from Taiwan
R73/348	Watson, J. December 6, 1973	S. Dennis, Inc., et al.	R68/6750, etc.	Export value: Invoiced unit prices	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R73/349	Watson, J. December 6, 1973	S. Dennis, Inc., et al.	R68/0538, etc.	Export value: Invoiced unit prices plus a prorated portion of the items marked "X"	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R73/350	Watson, J. December 6, 1973	Exbrook, Inc.	R68/6873, etc.	Export value: Invoiced unit prices	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R73/351	Watson, J. December 6, 1973	Exbrook, Inc., et al.	R68/6907, etc.	Export value: Invoiced unit prices plus a prorated portion of the items marked "X"	Not stated	Exbrook, Inc. v. U.S. (R.D. 11772)	San Francisco Men's shirts and other wearing apparel
R73/352	Newman, J. December 6, 1973	Topp Import & Export, Inc.	R67/22007	Constructed value	$5.66 each radio; $0.12 each earphone; $0.10 each battery	Judgment on the pleadings	New York Radios with earphones and batteries

ERRATUM

In Customs Bulletin of November 14, 1973, Vol. 7, No. 46, C.D. 4476, page 15, 18th line, delete the words "a price other than".

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